

SENATE BILL 1266
By Ramsey

AN ACT to amend Tennessee Code Annotated, Title 56,
Chapter 38, Part 1, to enact the "Amusement Ride
and Attraction Safety Act".

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 56, Chapter 38, Part 1, is amended by deleting the part in its entirety and by substituting instead Sections 2 through 18 of this act as a new part.

SECTION 2. The title of this act is and may be cited as the "Amusement Ride and Attraction Safety Act".

SECTION 3. As used in this act, unless the context otherwise requires:

(1) "Amusement ride" means any of the following, which is primarily for the purpose of giving its patrons amusement, pleasure, thrills, or excitement, and which is open to the general public excluding skill teaching, exercise, and team building:

(A) Any mechanical device that carries or conveys passengers along, around or over a fixed or restricted route or course or within a defined area;

(B) Any dry slide over twenty (20) feet in height excluding water slides;

(C) Any tram, open car, or combination of open cars or wagons pulled by a tractor or other motorized device, except hayrack rides, those used solely for transporting patrons to and from parking areas, or those used for guided or educational tours, but does not necessarily follow a fixed or restricted course;

(D) Any bungee cord attraction or similar elastic device;

(E) Any climbing wall over ten feet (10') in height except for not-for-profit entities that follow the YMCA Services Corporation's Climbing Walls Safety Guidelines or the Boy Scouts of America Guidelines;

- (2) "Board" means the amusement ride safety board established in Section 4;
- (3) "Department" means the department of safety;
- (4) "Commissioner" means the commissioner of safety;
- (5) "Operator" means a person or the agent of a person who owns or controls, or has the duty to control, the operation of an amusement ride or related electrical equipment;
- (6) "Owner" means a person who owns, leases, controls or manages the operations of an amusement ride and may include the state or any political subdivision of the state;
- (7) "Qualified inspector" means any person who is:
- (A) Found by the commissioner to possess the requisite training and experience in respect of amusement rides to perform competently the inspections required by this act;
 - (B) Certified by the National Association of Amusement Ride Safety Officials (NAARSO) to have and maintain at least a level one certification; or
 - (C) Is a member of the Amusement Industry Manufacturing and Suppliers (AIMS) and meets such qualifications as are established by the board;
- (8) "Related electrical equipment" means any electrical apparatus or wiring used in connection with amusement rides;
- (9) "Safety rules" means the rules and regulations governing rider conduct on an amusement ride, provided such rules and regulations are prominently displayed at or near the entrance to, or loading platform for, the amusement ride;
- (10) "Serious physical injury" means a patron personal injury immediately reported to the owner or operator as occurring on an amusement ride and which results in death, dismemberment, significant disfigurement or other significant injury that

requires immediate in-patient admission and twenty-four (24) hour hospitalization under the care of a licensed physician for other than medical observation; and

(11) "Serious incident" means any single incident where three (3) or more persons are immediately transported to a licensed off-site medical care facility for treatment of an injury as a result of being on or the operation of the amusement ride.

SECTION 4.

(a) There is hereby established an Amusement Ride Safety Board to be composed of nine (9) members, one of whom shall be the state fire marshal or the marshal's designee. The remaining eight (8) members of the board shall be appointed by the governor with the advice and consent of the senate. Each member appointed by the governor shall be appointed for a staggered term of five (5) years or until a successor is appointed. The governor shall fill any vacancy on the board for the remainder of the unexpired term with a representative of the same interest as that of the member whose term is vacant. No more than four (4) members of the board, who are not employees of state or local government, shall be members of the same political party.

(b) Three (3) members of the board shall represent the interests of small amusement ride businesses that operate in this state. Three (3) members of the board shall represent the interests of the fixed amusement ride parks. One (1) member of the board shall be a resident of this state. One (1) member of the board shall be a mechanical engineer knowledgeable of amusement rides.

(c) The state fire marshal shall call the first meeting of the board within sixty (60) days after all members have been appointed and qualified. The members from among their membership shall elect a chairperson. After the initial meeting, the members shall

meet at the call of the chairperson, but shall meet at least three (3) times per year. Five (5) members of the board shall constitute a quorum.

(d) The members of the board shall receive no compensation for their services, but shall be entitled to reimbursement for their actual and necessary expenses incurred in the performance of their official duties in conformity with comprehensive travel regulations as promulgated by the department of finance and administration and approved by the attorney general and reporter.

SECTION 5.

(a) The amusement ride safety board shall have the power to:

(1) Consult with engineering authorities and organizations who are studying and developing amusement ride safety standards;

(2) Adopt a code of rules and regulations governing maintenance, testing, operation, and inspection of amusement rides. The board shall have the power to adopt a safety code only for those types of amusement rides defined in the statutes. In promulgating the amusement ride safety code the board may consider any existing or future American Society for Testing and Materials (ASTM) safety standards affecting amusement rides as defined in Section 3 of this act, or any other nationally acceptable standard; and

(3) Make recommendations to the state fire marshal concerning the board's findings on safety issues related to amusement rides.

(b) No rule or portion of a rule promulgated pursuant to this section shall take effect unless such rule has been promulgated pursuant to the Uniform Administrative Procedures Act, title 4, chapter 5.

SECTION 6. The commissioner shall promulgate rules in accordance with the Uniform Administrative Procedures Act, title 4, chapter 5, necessary to administer the provisions of this

act including rules for the reporting of any fatalities or serious physical injuries incurred from the operation of amusement rides, or specifically related electrical equipment, and the subsequent inspection of such amusement rides and related electrical equipment.

SECTION 7. The operator of an amusement ride shall immediately cease to operate any ride upon which a fatality, serious physical injury or serious incident has occurred. The owner of such amusement ride shall immediately notify the office of the state fire marshal of such accident. The cessation shall remain in force until the department has performed an inspection of any such amusement ride or equipment and has determined that the ride or related equipment is safe for public use. The department shall cause such inspection to be initiated within twenty-four (24) hours of receipt of the report of a fatality, serious physical injury or serious incident caused by the operation of an amusement ride and shall perform the inspection in a manner that proceeds with all practicable speed and minimizes the disruption of the amusement facility at which the amusement ride is located, as well as unrelated commercial activities. Such inspection shall be performed by a qualified inspector employed by the department either directly or through contract. The cost of any such inspection shall be paid for by the owner of the amusement ride. Such inspections may be completed immediately following the reasonable determination by the qualified inspector or by the commissioner's designee that a principal cause of the serious physical injury was the victim's failure to comply with the posted safety rules or with verbal instructions.

SECTION 8.

(a) A person shall not operate an amusement ride unless the owner:

(1) Has the amusement ride inspected at least once annually by a qualified inspector, whom the owner or an insurer has provided to perform such inspection, and obtains from such qualified inspector written documentation that the inspection has been made and that the amusement ride meets nationally

recognized inspection standards and is covered by the insurance required by subdivision (2) of this subsection;

(2) Has:

(A) An insurance policy currently in force written by an insurance company authorized to do business in this state in an amount of not less than one million dollars (\$1,000,000) per occurrence; or

(B) A bond in the same amount as such person's policy from paragraph (A) of this subdivision, provided that the aggregate liability of the surety under such bond shall not exceed the face amount of the bond; or

(C) Cash or other surety acceptable to the department.

(3) Files with the department the inspection report and certificate of insurance verifying the policy required by this section or a photocopy of such documentation or certificate; and

(4) Has been issued a state operating permit by the department and affixed such permit to the designated amusement ride. Such permit fee shall not exceed actual administrative costs.

(b) The inspection required pursuant to subdivision (a)(1) of this section shall be conducted at a minimum to meet the manufacturer's or engineer's specifications and to follow the applicable national standards.

(c) The department or the department's designee may conduct a spot inspection of any amusement ride without notice at any time while such amusement ride is operating or will be operating in this state. The department may order temporary suspension of an operating permit if it has been determined after a spot inspection to be hazardous or unsafe. Operation of such amusement ride shall not resume until the

hazardous or unsafe condition has been corrected and subjected to reinspection by the department for an inspection fee established by rule.

SECTION 9. Each owner or operator shall retain on the premises or with a traveling amusement ride for at least three (3) years all maintenance, inspection and accident records for each amusement ride. The owner shall make such records for the ride under inspection for failure or malfunction available to the commissioner or the commissioner's designee upon request.

SECTION 10. The owner or operator of portable amusement rides shall file an itinerary with the department on a department form no less than fifteen (15) days before the operation of an amusement ride for use by the public. The itinerary shall include the following:

- (1) The name of the amusement ride owner;
- (2) The carnival, fair, or activity sponsor;
- (3) The address and telephone number of the site;
- (4) The dates open to the public; and
- (5) The name of the contact person on site.

SECTION 11. In addition to any and all other remedies, if an owner, operator or person in charge of any amusement ride covered by this act continues to operate any amusement ride covered by this act, during the pendency of a cessation pursuant to Section 7, then the commissioner may petition the circuit court, in an action brought in the name of the state, for a writ of injunction to restrain the use of the alleged defective amusement ride.

SECTION 12.

(a) Any person who knowingly operates, causes to be operated or directs someone to operate an amusement ride in violation of this act is guilty of a Class A misdemeanor.

(b) Any person who knowingly makes a false statement, representation, or certification in an application, record, report, or other document filed or required to be maintained under this act is guilty of class A misdemeanor

SECTION 13. Nonmotorized playground equipment, including but not limited to, swings, seesaws, stationary spring-mounted animal features, rider-propelled merry-go-rounds, climbers, slides, waterslides operated by a municipal or county park and recreation department, trampolines or swinging gates, whether or not located on a playground, are exempt from the provisions of this act.

SECTION 14. Nothing contained in this act shall prevent any political subdivision of this state from licensing or regulating any amusement ride, electrical equipment, carnival or circus as otherwise provided by law.

SECTION 15. This act shall not be construed to alter the duty of care or the liability of an owner of an amusement ride for injuries or death to any person or damage to any property arising out of an accident involving an amusement ride. This act shall not be construed to alter the duty of care of a passenger of an amusement ride or parent or guardian of such passenger for injuries or death to any person or damage to any property arising out of an accident involving an amusement ride. The state and its officers and employees shall not be construed to assume liability arising out of an accident involving an amusement ride by reason of administration of this act.

SECTION 16.

(a) A passenger on an amusement ride shall, at a minimum:

(1) Obey the reasonable safety rules posted in accordance with this act and oral instructions for an amusement ride issued by the amusement owner or such owner's employee or agent, unless:

(A) The safety rules are contrary to this act; or

(B) The oral instructions are contrary to this act or the safety rules; and
(2) Refrain from acting in any manner that may cause or contribute to injuring such passenger or others, including:

- (A) Interfering with safe operation of the amusement ride;
- (B) Not engaging any safety devices that are provided;
- (C) Disconnecting or disabling a safety device except at the express instruction of the operator;
- (D) Altering or enhancing the intended speed, course or direction of an amusement ride;
- (E) Extending arms and legs beyond the carrier or seating area except at the express direction of the ride or attraction operator;
- (F) Throwing, dropping or expelling an object from or toward an amusement ride;
- (G) Getting on or off an amusement ride except at the designated time and area, if any, at the direction of the ride operator, or in an emergency; and
- (H) Unreasonably controlling the speed or direction of such passenger or an amusement ride that requires the passenger to control or direct himself or herself or a device.

(b) Any person who violates the provisions of this section is guilty of a Class A misdemeanor.

SECTION 17. An amusement ride passenger shall not get on, enter, or attempt to get on an amusement ride unless the passenger reasonably determines that, at a minimum, he or she:

(1) Has sufficient knowledge to use, get on, enter, or get off the amusement ride safely without instruction or has requested and received before getting on the ride sufficient information to get on, use, enter, or get off safely;

(2) Has located, reviewed and understood any signs in the vicinity of the ride and has satisfied any posted height, medical or other restrictions and abided by all rules, regulations and restrictions;

(3) Is not under the influence of alcohol or any drug that affects his or her ability to safely use the amusement ride or obey the posted rules or oral instructions; and

(4) Is authorized by the amusement owner or such owner's authorized servant, agent or employee to get on the amusement ride.

SECTION 18. All rock climbing walls over ten (10) feet tall operated in this state, except as provided in Section 3(1)(E), shall be subject to the same rules and regulations as amusement rides.

SECTION 19. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 20. For purposes of promulgating rules and regulations, this act shall take effect upon becoming a law, the public welfare requiring it. For all other purposes this act shall take effect January 1, 2005, the public welfare requiring it.